

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1505 of 1984

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? Yes
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge?

No

INDIAN RAYON CORPORATION LTD

Versus

UNION OF INDIA

Appearance:

MR SATHYAM THAKKAR for MR KS NANAVATI for Petitioners
MS. AVANI S. MEHTA with Mr. J.D. AJMERA, Central
Govt. Standing Counsel, for Respondents

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

Date of decision: 05/03/98

ORAL JUDGEMENT (Per K. Sreedharan, C.J.)

The petitioner Company was engaged in manufacture of Viscose Filament Yarn (VFY) out of wood-pulp which is the principal raw material. Fifty per cent of the raw material is purchased by the company from indigenously produced wood-pulp falling under Tariff Item No. 68 of

Central Excise Tariff. Balance 50% wood-pulp is imported from foreign countries.

2. Under Section 3 of the Customs Tariff Act, additional duty equivalent to the excise duty for the time being leviable on a like article if produced or manufactured in India, is leviable. The petitioner company was thus called upon to pay additional customs duty equivalent to the excise duty leviable on wood pulp produced or manufactured in India. When the wood-pulp manufactured indigenously excisable to excise duty is used in the manufacture of Viscose Filament Yarn, set off of duty paid was being given against the duty leviable on Viscose Filament Yarn. In the case of imported wood-pulp, the additional customs duty paid was not allowed to be set off when they are used in the manufacture of Viscose Filament Rayon Yarn. Even countervailing duty levied was not given even though the additional customs duty is, in fact, nothing but excise duty on the imported goods, in different nomenclature.

3. On these allegations, the petitioners moved this Court by filing Special Civil Application No. 1798 of 1983. The petitioners averred before this Court that having regard to the exemption Notification dated 4.6.1979 issued under sub-rule (1) of Rule 8 of Central Excise Rules, 1944, no additional duty under Sec. 3 of the Customs Tariff Act, 1975 is leviable on the imported wood-pulp. This Court, instead of going into that issue, directed the petitioners to make representation to the Government of India in the Ministry of Finance for redressal of their grievances. In pursuance of that direction, the petitioners moved Annexure-F representation claiming set off of additional customs duty, that is, countervailing duty, in terms of Notification No. 201/79-CE dated 4.6.1979. That representation dated 3.9.1983 was not disposed of by the Government of India in the Ministry of Finance. Hence, the petitioners have moved this Special Civil Application on 13.3.1984. The main prayer made therein is to issue a Writ of Mandamus directing the respondents to refund all the additional duties of customs levied and collected on the wood-pulp imported by the petitioner Company at various places such as Veraval, Kandla and Bombay with interest, on account of Notification No. 201/79-CE dated 4.6.1979.

4. The Assistant Collector of Customs and Central Excise, Junagadh, has filed affidavit dated 21.6.1984 in reply to the averments made by the petitioners in the special civil application.

5. In Para 4 of that affidavit, he has averred, "petitioners ought to await the outcome of the representation and then, if the petitioners' grievance is not redressed, they should resort to alternative remedy available under the Act as pointed hereinabove."

6. While disposing of Special Civil Application No. 1798/83 by judgment dated 25.4.1983, this Court directed the petitioners to make representation to the Government of India in the Ministry of Finance within a period of two weeks therefrom. The petitioners could not file the representation within the said time frame for justifiable reasons. The representation was in fact filed on 3.9.1983. No order has been passed on that representation by the Central Government till date.

7. On almost identical set of facts, the right of the firm to get set off or refund of the duty paid was considered by the Apex Court in *Thermax Pvt. Ltd. vs. The Collector of Customs*, AIR 1993 S.C. 1339. Their Lordships came to the conclusion that, "if the person using goods is entitled to remission, the importer will be entitled to say that the CVD should only be the amount of concessional duty and, if he has paid more, will be entitled to ask for a refund."

8. This statement of the law, according to the petitioner, applies on all fours to the case of the company. Consequently, it is argued that the Government of India in the Ministry of Finance should be directed to pass final order on Annexure-F representation in accordance with law and in the light of the above decision of the Supreme Court on an early date.

9. On the facts and circumstances of this case, we feel that the said prayer made by the Learned Counsel representing the petitioners is well-founded. Without expressing any opinion on the merits of the claim put forward by the petitioners, we direct the Central Government to pass final order on Annexure-F representation in accordance with law as expeditiously as possible, at any rate within four months from the date of receipt of a copy of this judgment. The petitioners are directed to forward a copy of this judgment along with Annexure-F representation to the Central Government for complying with the above direction. We make it clear that while passing the final order, the petitioners should also be given reasonable opportunity of being heard in the matter. Special Civil Application is disposed of in the above terms. Rule is discharged. No

costs.

5.3.1998 (K. Sreedharan, C.J.)

(A.R. Dave, J.)